

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
LIVING WORD COMMUNICATIONS, INC.)	Facility ID No. 37814
)	NAL/Acct. No. MB-200741410156
Licensee of FM Translator Station W232AR)	FRN: 0012187191
Marshfield, Wisconsin)	File No. BRFT-20041122AFX

FORFEITURE ORDER

Adopted: September 7, 2010**Released: September 8, 2010**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250) to Living Word Communications, Inc. ("Living Word"), licensee of FM translator station W232AR, Marshfield, Wisconsin ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a license renewal application for the Station.¹

II. BACKGROUND

2. On February 9, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of one thousand, five hundred dollars (\$1,500) to Living Word for this violation.² As noted in the NAL, Living Word's renewal application for the Station's license term was due on August 1, 2004, four months prior to the December 1, 2004, expiration date.³ Living Word did not file the application until November 22, 2004, and provided no explanation for its late filing. In response to the NAL, Living Word submitted a letter ("Response") on March 7, 2007.

3. In its Response, Living Word states that: (1) its failure to timely file was unintentional; and (2) payment of the proposed forfeiture will cause it financial hardship. Living Word asserts that these reasons warrant cancellation or a substantial reduction of the proposed forfeiture.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and the

¹ 47 C.F.R. § 73.3539.

² *Living Word Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2527 (MB 2007). The Commission granted the license renewal application on January 31, 2007.

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

Commission's *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

5. Living Word does not dispute that it failed to file a timely renewal application for the Station, but states that "when [it] reviewed the on-line instructions [it] did not see mention of an application deadline."⁸ As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.⁹ We have declined to reduce or cancel forfeitures in similar circumstances.¹⁰ Living Word has failed to justify why departure from this precedent is warranted.

6. Living Word further contends that it would be "simply devastated" by the proposed \$1,500 forfeiture.¹¹ The Commission will not consider reducing or canceling a forfeiture in response to financial hardship unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status.¹² Living Word has not submitted any documentation to support its financial hardship claim, but states that it has no regular source of income and no assets other than the translator equipment and antennas.¹³ We find this information alone is an insufficient basis on which to assess Living Word's inability to pay.¹⁴ Accordingly, we will not consider this argument further.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Response at 1.

⁹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹⁰ See *Wayne Kowalski*, Forfeiture Order, 24 FCC Rcd 13835 (2009) (refusing to reduce or cancel a forfeiture based on licensee's unawareness of the proper filing deadline); *Christian Radio Translator Assoc./Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288 (2009) (same); *East Tennessee State University*, Forfeiture Order, 24 FCC Rcd 3546 (2009) (same).

¹¹ Response at 1.

¹² See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹³ Response at 1.

¹⁴ See *Kane County Special Service District #1*, Forfeiture Order, 25 FCC Rcd 2550 (MB 2010) (decline to reduce or cancel a forfeiture order where claim of financial hardship was not supported by any documentation); *Little Miami Local Schools*, Forfeiture Order, 25 FCC Rcd 3553 (MB 2010) (same).

7. However, our recent practices do allow for a reduction to \$250 for instances of late-filed renewal applications involving FM translator stations, which we will apply here.¹⁵ We therefore find that a \$250 forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of Section 73.3539 of the Rules.¹⁶

8. We have considered the Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Living Word willfully¹⁷ violated Section 73.3539 of the Rules. However, for the reasons described above, we reduce the forfeiture amount *sua sponte* to two hundred and fifty dollars (\$250).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁸ that Living Word Communications, Inc., SHALL FORFEIT to the United States the sum of two hundred and fifty dollars (\$250) for willfully violating Section 73.3539 of the Commission's Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²⁰ Living Word will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Keith.Watson@fcc.gov. Requests for payment of the full amount of the

¹⁵ See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740, 8742 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922, 20923 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445, 11446 (MB 2007) (same).

¹⁶ *Id.*

¹⁷ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.

forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.²¹

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, and by First-Class Mail, to Clair Wendt, Living Word Communications, Inc., 1609 South Hemlock, Marshfield, WI 54449.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ *Id.*